PROPERTY, LAW AND GOVERNANCE IN RURAL AUSTRALIA: INHERITANCE AND DIVORCE ON THE FARM

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Being a thesis submitted for the Degree of Doctor of Philosophy in the Department of Sociology, Division of Society, Culture, Media and Philosophy, Macquarie University, North Ryde, Sydney, 2001.
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This thesis represents a major part of the prescribed program of study.
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ABSTRACT

This thesis studies family property law in rural Australia in the area of inheritance, divorce and social security. I analyse how legal notions of property are shaped by popular discourses which embody notions of work, sexuality and economics.

This project builds on Foucault’s lectures on governmentality and on the notion of Australia as a culture of liberalism. The notion of governmentality enables us to understand the role of government as utilising a complex set of assemblages, techniques and classifications to direct its citizens. My approach to liberalism is to regard it as a form of government which is constantly involved in a critique of excessive government. My approach is that liberalism should be understood as an art of government that seeks to indirectly shape the capacities of free subjects to achieve its purposes and goals.

In detail, I argue three propositions. Firstly, I regard that the laws concerning rural family property are legal discourses which embody notions of work, sexuality and ideas of what I call popular economics. I examine how discourses of work operate in inheritance cases through notions of deservedness. For instance, work on farms by sons is seen to justify an inheritance while work by females is not so regarded. Likewise, in divorce cases, work by a husband in building up a property is rewarded in a property dispute while a wife’s labour usually tends to be disregarded.

I regard sexuality as a popular discursive formation which constructs women as dependants who do not make an economic contribution. Women in inheritance cases are seen as not needing support should they marry; they are regarded as having been provided for by their husband. Moreover, their labour is seen as non-deserving so as to not threaten male continuity of farming property.

As regards economic discourses pertaining to work on farms, I argue (following Hirschman) that legal cases adopt notions of behaviour as "orderly", and "predictable" in assessing outcomes in divorce and inheritance cases.

Secondly, liberalism as an approach to government shapes the activities of farmers, augmenting their own autonomy and independence in several ways. I argue that family property held through a family trust or company enables the family to secure their
financial independence and maintain the long-term continuity of agrarianism. I also argue that the readjustment to liberalism *circa* 1900 readjusted notions of the family to make it more autonomous and independent. Likewise, in the divorce context I argue that recent *Family Law Act* cases viewed from a *neoliberal* perspective demonstrate that the family is being shaped by notions of self-help and financial independence.

Thirdly, I regard law as operating as a disciplinary form of social cohesion in the sense that it incorporates popular and professional discourses and compiles facts in a genealogical manner. Implied in this approach is the argument that law as *governance* creates a form of legal knowledge about the family which excludes other accounts.
I hereby declare that the work presented in this thesis is, to the best of my knowledge and belief, original. The work is my own, except as acknowledged in the text and the material has not been submitted, either in whole or in part, for a degree at this or any other university.

Signed ............................................
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